

ESTTA Tracking number: **ESTTA558045**

Filing date: **09/06/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204122
Party	Defendant Michael Liang
Correspondence Address	DAVID YAN LAW OFFICES OF DAVID YAN 136 20 38TH AVENUE, SUITE 11E FLUSHING, NY 11354 4232 UNITED STATES davidyanlawfirm@yahoo.com
Submission	Other Motions/Papers
Filer's Name	David Yan
Filer's e-mail	davidyanlawfirm@yahoo.com
Signature	/David Yan/
Date	09/06/2013
Attachments	Response to the Opposer's First Set of Requests for Admissions.pdf(26285 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/213,453
Filed: January 8, 2011
For Mark: NYC BEER LAGER and Design
Published in the Official Gazette: December 6, 2011

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EMPIRE STATE BUILDING COMPANY L.L.C.,	:	
	:	
Opposer,	:	
	:	
v.	:	Opposition No.: 91204122
	:	
MICHAEL LIANG,	:	
	:	
Applicant.	:	
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Commissioner for Trademarks
Attn: Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT'S RESPONSE
TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120,
Applicant, MICHAEL LIANG ("Applicant"), by and through his undersigned attorney, hereby
submit responses and objections to Opposer Empire State Building Company L.L.C.
("Opposer")'s First Set of Requests for Admissions:

GENERAL OBJECTIONS

The following General Objections are incorporated into each Specific Objection and
Response below as if set forth in full responses to each individually numbered response. The

failure to specifically incorporate a General Objection shall not be construed as a waiver of the same.

1. Applicant objects to each and every Request for Admissions herein to the extent that it seeks information or documents protected by any privilege or protection from discovery, including but not limited to the attorney-client privilege and the work-product doctrine. The inadvertent production of any material protected by the attorney-client privilege, the work-product doctrine or any other applicable privilege, immunity or protection from disclosure is not intended and should not be construed to constitute a waiver. Applicant reserves the right to assert all applicable privileges and protections from production.
2. Applicant objects to each and every Request for Admissions to the extent that it seeks to impose requirements that are inconsistent with, or beyond those contemplated by, the Federal Rules of Civil Procedure and/or the Code of Federal Regulations.
3. Applicant objects to each and every Request for Admissions to the extent that the definitions, instructions, or specific requests are vague, ambiguous, overly broad, and/or unduly burdensome.
4. Applicant objects to each and every Request for Admissions to the extent that it seeks information that is a matter of public record or equally available to Opposer.
5. Applicant objects to each and every Request for Admissions to the extent that it calls for an expert opinion on the ground that it violates the work-product doctrine.

6. Applicant objects to each and every Request for Admissions to the extent that it seeks Applicant confidential and proprietary information, the disclosure of which will or may cause harm to Applicant.
7. Applicant objects to each and every Request for Admissions as overly broad, unduly burdensome, and oppressive, insofar as it seeks information which is in the custody, possession, or control of Opposer or its agents, or is equally available to the public.
8. Applicant objects to each and every Request for Admissions to the extent that it is overly broad, unduly burdensome, and oppressive, where the Request for Admissions requests the identification of “all” documents when all relevant facts can be obtained from fewer than “all documents.”
9. Applicant objects to each and every Request for Admissions to the extent that it is overly broad and unduly burdensome by requesting documents that are neither relevant to the claim or defense of any party nor reasonably calculated to lead to the discovery of admissible evidence.
10. Applicant objects to each and every Request for Admissions to the extent that it is vague or ambiguous.
11. Applicant objects to each and every Request for Admissions to the extent that it is overly broad, unduly burdensome, or oppressive.
12. Applicant objects to each and every Request for Admissions to the extent that it requires Plaintiff to produce documents not within Applicant’s possession, custody, or control. Unless otherwise specified, Applicant will not produce any

documents in the possession, custody, and control of any third party, including any agent or outside attorney of Applicant.

13. Applicant objects to each and every Request for Admissions to the extent that it seeks information without any limitation to the time period relevant to this action.
14. In making these objections, Applicant does not in any way waive, or intend to waive, but rather intend to preserve and are preserving.
15. All objections as to competency, relevancy, materiality, and admissibility of any information that may be provided in response to the Request for Admissions, or the subject matter thereof.
16. All rights to object on any ground to the use of any information that may be provided in response to the Request for Admissions, or the subject matter thereof, in any subsequent proceedings, including the trial of this or any other matter.
17. All rights to object on any ground to any request for further responses to the Request for Admissions or any other document request.
18. Applicant's objections herein and the production of any documents by Applicant pursuant to any Request for Admissions are not intended to waive or prejudice any objections or privileges Applicant may later assert, without limitation.
19. Applicant reserves the right to supplement, amend, correct, or clarify the responses and objections to the Request for Admissions.

In addition to the General Objections set forth above, Applicant sets forth below Specific Objections to individual requests where appropriate, including objections that are not generally applicable to all of the requests. By setting forth such Specific Objections, Applicant does not

intend to limit the General Objections set forth above. To the extent that Applicant responds to requests to which they object, such objections are not waived by a response.

The information provided herein is based upon, and is therefore limited by, the records and information in existence, presently collected and thus far discovered in the course of the preparation of these responses.

**SPECIFIC OJECTIONS AND RESPONSES
TO DEFENDANTS' REQUESTS FOR ADMISSION**

Request No. 1:

Admit that Opposer's Empire State Building Marks are famous.

Response No. 1:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Deny that Opposer's Empire State Building Marks are famous in general.
- (b) Noticed from the Opposer's "Notice of Opposition", Applicant admits that the word mark and design mark of "Empire State Building" is the registered mark on December 12, 2000 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2411972 for the goods/services of "Class 041 . . . entertainment services, namely providing observation decks in a skyscraper for purposes of sightseeing."
- (c) Noticed from the Opposer's "Notice of Opposition", Applicant admits that the word mark and design mark of "Empire State Building" is the registered mark on December 19, 2000 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2413667 for the

goods/services of “Class 036 . . . Real estate services, namely the management and leasing of real estate.”

(d) Noticed from the Opposer’s “Notice of Opposition”, Applicant admits that the design mark containing a logo of skyscraper of a building so unique to its own drawing and without any reference to any words or typed drawing of “Empire State Building” is the registered mark on February 20, 2001 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2429297 for the goods/services of “Class 036 . . . Real estate services, namely the management and leasing of real estate.”

(e) Noticed from the Opposer’s “Notice of Opposition”, Applicant admits that the design mark containing a logo of skyscraper of a building so unique to its own drawing and without any reference to any words or typed drawing of “Empire State Building” is the registered mark on February 27, 2001 with the U.S. Patent and Trademark Office under the U.S. Registration No. 2430828 for the goods/services of “Class 041 . . . entertainment services, namely providing observation decks in a skyscraper for purposes of sightseeing.”

(f) Deny that the Opposer’s Empire State Building Marks are famous for the goods/services of Alcohol-free beers; Beer; Beer, ale and lager; Beer, ale and porter; Beer, ale, lager, stout and porter; Beer, ale, lager, stout, porter, shandy; Beers; Black beer; Brewed maltbased alcoholic beverage in the nature of a beer; Coffee-flavored beer; De-alcoholised beer; Extracts of hops for making beer; Flavored beers; Ginger beer; Hop extracts for manufacturing beer; Imitation beer; Malt beer; Malt extracts for making beer; Malt liquor; Non-alcoholic beer; Pale beer; Porter
Intent to Use: The applicant has a bona fide intention to use or use through the applicant’s related company or licensee the mark in commerce on or in connection with the identified goods and/or services.

(g) Deny that Opposer's Empire State Building Marks are famous at least in the area of skylines, gravestones, leaning tower of pisa, space needle, tombstones, totem poles, envelopes, rectangles as carriers or rectangles as single or multiple line borders where New York Envelope Corp. is the Registrant of the word mark, "NY" with the designed drawing of a logo that shows a fanciful design of the **Empire State Building** surrounded by smaller buildings and envelopes and the letters "N" and "Y" in a rectangle, which has a U.S. Registration No. 1247058.

Request No. 2:

Admit that Opposer's Empire State Building Marks were famous prior to:

- (a) January 8, 2011, when Applicant filed Application Serial No. 85/213,453.
- (b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 2:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Deny in general and same qualified response as Response No. 1.
- (b) Not applicable and same qualified response as Response No. 1.

Request No. 3:

Admit that Opposer's Empire State Building Marks are closely identified and associated with Opposer's goods and services.

Response No. 3:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Applicant does not understand the Opposer's Request for Admissions because the term "Opposer's goods and services" is vague and not defined anywhere by Opposer.
- (b) Applicant admits to the extent that Opposer's Empire State Building Marks are identified and associated with goods and services in the Opposer's self-serving statements in the U.S. Registration No. 2411972, 2413667, 2429297, and 2430828.

Request No. 4:

Admit that Applicant was aware of Opposer's Empire State Building Marks prior to:

- (a) January 8, 2011, when Applicant filed Application Serial No. 85/212,453.
- (b) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 4:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Admit.

- (b) This Request is not applicable because Applicant has not used the Applicant's Mark pending the final approval and registration of the Applicant's Mark.

Request No. 5:

Admit that Applicant was aware of goods or services marketed, manufactured, distributed, offered for sale, sold, licensed or rendered by Opposer or under license from Opposer in connection with Opposer's Empire State Building Marks prior to:

- (c) January 8, 2011, when Applicant filed Application Serial No. 85/212,453.
- (d) Any use by Applicant of Applicant's Mark in connection with any goods or services.

Response No. 5:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (c) Deny, except for admitting that Applicant is aware of the sightseeing services in the observation decks in the Empire State Building.
- (d) This Request is not applicable because Applicant has not used the Applicant's Mark pending the final approval and registration of the Applicant's Mark.

Request No. 6:

Admit that Applicant's services covered by Application No. 85/213,453 are marketed or intended to be marketed to consumers of Opposer's goods and/or services.

Response No. 6:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

Applicant does not understand the Opposer's Request for Admissions because the term "Opposer's goods and services" is vague and not defined anywhere by Opposer. Applicant does not understand the Opposer's Request for Admissions because Applicant does not know who are consumers of Opposer's goods and services.

Request No. 7:

Admit that Applicant has no connection with Opposer and has no authorization from Opposer to use the building design in Applicant's Mark.

Response No. 7:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Admit that Applicant has no connection with Opposer.
- (b) Admit that Applicant has no authorization from Opposer to use its building design registered in the U.S. Patent and Trademark Office. Applicant, however, has not used the Opposer's the building design registered in the U.S. Patent and Trademark Office in the Applicant's Mark.

Request No. 8:

Admit that Applicant intended the building design in Applicant's Mark to resemble the Empire State Building.

Response No. 8:

Applicant objects to this Request for Admissions on the ground that it is overly broad and unduly burdensome.

Subject to and without waiving any General Objection or Specific Objection, Applicant answers as follows:

- (a) Admit.
- (b) The building design in Applicant's Mark is not the Empire State Building.

Dated: Flushing, New York
September 5, 2013

Law Offices of David Yan
Attorney for Applicant

by: /David Yan/
David Yan

136-20 38th Avenue, Suite 11E
Flushing, NY 11354
Tel.: (718) 888-7788

AFFIRMATION OF SERVICE

I hereby certify that, on September 5, 2013, I caused a true and complete copy of the foregoing Applicant's Response to the Opposer's First Set of Requests for Admissions to be served by electronic mail in PDF Format to Opposer's counsel of record, William M. Borchard, Esquire of Cowan Liebowitz, & Latman, P.C., at his email address of at WMB@cll.com.

/David Yan/
David Yan